

Guidelines for Preparing Joint Ventures and Teaming Arrangements

1. What is a Joint Venture Agreement?

- a. A Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) Participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the Participants.

2. When are Joint Ventures permitted?

- a. Joint Ventures are permitted only when:
 - (1) The 8(a) Participant lacks the capacity to perform the contract on its own;
 - (2) The Joint Venture arrangement is fair and equitable;
 - (3) The Joint Venture will be of substantial benefit to the 8(a) Participant; and
 - (4) The 8(a) Participant brings substantial resources and/or expertise to the Joint Venture.

3. What does capacity mean?

- a. "Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract.
- b. Some of the areas of capacity include:
 - (1) Adequate bonding (if necessary);
 - (2) Adequate financing;
 - (3) Technical expertise;
 - (4) Experience with similar requirements;
 - (5) Access to specialized/required equipment; and
 - (6) Access to appropriate facilities.

4. What role must the 8(a) Participant have in the Joint Venture?

- a. An 8(a) Participant must be designated as the managing (or lead) Venturer, and an employee of the managing Venturer must serve as the project manager responsible for performance of the 8(a) contract.

5. How does SBA determine if the Joint Venture is small?

- a. Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are \$10 million or less for employee-based size standards:
 - (1) The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and
 - (2) The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.
- b. For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or \$10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract. See 13 CFR 124.513(b). See also 13 CFR 124.513(b)(3) and question 6 of this notice for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.

6. How does SBA determine if the Joint Venture is small under the Mentor Protégé Program?

- a. A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. See 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the size of the Mentor and the combined size of its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as its Protégé is small under the size standard for the NAICS code assigned to the procurement.

7. What office must a Participant notify if it intends to enter into a Joint Venture Agreement and what information will be provided to the Participant?

- a. An 8(a) Participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type,

that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.

- b. The District Office must provide the Participant and any other parties to the Agreement notice of all provisions required by SBA in the Joint Venture Agreement and all restrictions imposed by SBA on such agreements.

8. What are the general requirements for submitting and obtaining SBA approval of Joint Venture Agreements?

- a. The Joint Venture applicants must submit all required information to the managing 8(a) Participant's servicing District Office as soon as possible, but no less than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the Participant without action. The managing Participant is the managing partner or lead Venturer.
- b. The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.
- c. Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.
- d. SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

9. What documentation must be submitted by the Joint Venture applicants to the District Office for approval of a Joint Venture?

- a. The managing 8(a) Participant in the Joint Venture must submit the following information to its servicing District Office:
 - (1) The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and Question 10 of this notice); and
 - (2) Three years of signed company year end financial statements and Federal tax returns for each participant.
- b. A letter from the managing 8(a) Participant stating:
 - (1) What the 8(a) Participant or Participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;
 - (2) What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm;

- (3) What resources the 8(a) Participant(s) will bring to the Joint Venture; and
- (4) The supplemental information listed in Question 11 of this notice.

10. What must be in the Joint Venture Agreement?

- a. Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:
 - (1) Setting forth the purpose of the Joint Venture;
 - (2) Designating an 8(a) Participant as the managing Venturer of the Joint Venture, and an employee of the managing Venturer as the project manager responsible for performance of the 8(a) contract;
 - (3) Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) Participant(s);
 - (4) Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;
 - (5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the Joint Venture, with a detailed schedule of cost or value of each;
 - (6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;
 - (7) Obligating all parties to the Joint Venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;
 - (8) Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing Venturer, unless approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;
 - (9) Requiring that the final original records be retained by the managing Venturer upon completion of the 8(a) contract performed by the Joint Venture;
 - (10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and

- (11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

11. What supplemental information must be submitted by the Joint Venture applicants to the District Office?

- a. Along with the JVA, the Joint Venture applicants must submit the following general identifying information:
- (1) The name of the Joint Venture (the new entity);
 - (2) The EIN of the Joint Venture;
 - (3) The DUNS number of the Joint Venture;
 - (4) The names of the firms participating in the Joint Venture;
- b. For each firm involved in the Joint Venture, submit:
- (1) The primary industry of the firm;
 - (2) The current capabilities of the firm;
 - (3) A brief description of the history of the firm;
 - (4) SBA Form 355 (Application for Small Business Size Determination); and
 - (5) SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).
- c. The Joint Venture applicants must submit a description of the project that includes:
- (1) Customer Agency;
 - (2) Size and dollar value of project;
 - (3) Type of project (general construction, janitorial, etc.);
 - (4) Expected award date for the project;
 - (5) Duration of project and requirements for performance;
 - (6) Copy of the requirement's offer and acceptance letters; and

- (7) Draft or final copy of bid proposal or offer;
 - (8) An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;
 - (9) A copy of the Statement of Work; and
 - (10) The procurement's FedBizOpps synopsis.
- d. For non-8(a) Participants, the Joint Venture applicants must submit:
- (1) The number and value of contracts in the same NAICS code as that assigned to the procurement; and
 - (2) Relevant experience and professional licenses, etc.; and
 - (3) Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVAs.
- e. Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:
- (1) Cash flow;
 - (2) Personnel;
 - (3) Equipment; and
 - (4) Facilities.
- f. The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) Participants will receive at least 51 % percent of the profits earned by the Joint Venture.
- g. The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. See 13 CFR 124.510, 124.513(d); 125.6.
- h. The Joint Venture applicants must submit the following financial information and certifications:
- (1) Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. See Question 10;
 - (2) Amount and percentage of capital that each Venturer is contributing;

- (3) Three years of signed company yearend financial statements and Federal tax returns for each Participant; and
- (4) Where appropriate, evidence that the Joint Venture has sufficient bonding.
- i. The Joint Venture applicants must submit the following employee information:
 - (1) A list of the employees needed to perform the project (by position, type and number in each category);
 - (2) The number and skills of employees supplied to the Joint Venture by each Venturer; and
 - (3) A brief description of the hiring and employee management responsibilities of each Venturer.
- j. The Joint Venture applicants must submit the following concerning project management and administration:
 - (1) An explanation of how project management will be handled (the managing 8(a) Participant must maintain project management control);
 - (2) An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and
 - (3) A breakdown of work tasks to be performed by each Joint Venturer.
- k. The Joint Venture applicants must also submit:
 - (1) A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);
 - (2) A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) Participant along with an explanation demonstrating this; and
 - (3) A statement certifying that the 8(a) Participant(s) will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

12. How much of the work under a requirement must the Joint Venture perform?

- a. In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

- (1) Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;
- (2) Supplies or Products. 50% of the cost of manufacturing the supplies or products (not including the cost of materials);
- (3) General construction. 15% of the cost of the contract with its own employees (not including the cost of materials); and
- (4) Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). See 13 CFR 124.510, 13 CFR 125.6.

13. How much of the work of the Joint Venture must the 8(a) Participant(s) perform?

- a. The 8(a) Participant(s) of the Joint Venture must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:
 - (1) The nature of the industry of the procurement;
 - (2) The level of resources dedicated by the Participant(s) (including man-hours, equipment, bonding, etc.); and
 - (3) The ultimate business development benefits that the Participant(s) will receive from their performance on the contract.

14. Can the Joint Venture Agreement be amended?

- a. The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a) BD, legal clearance from District Counsel, and the final decision by District Director).

15. What is a teaming arrangement?

- a. A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. See FAR 9.601 and 9.602, 48 CFR 9.601 and 9.602.

16. What is the role of teaming arrangements in the 8(a)BD Program?

- a. A teaming arrangement may be a desirable business development tool. However, it may affect a Participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.

17. How is a teaming arrangement treated in the 8(a)BD Program?

- a. Joint Venture. Any teaming arrangement that creates a Joint Venture will be treated as a Joint Venture and will be subject to the requirements and limitations of all JVAs.
- b. Subcontract. Any teaming arrangement that creates a subcontractor relationship between the Participant and one or more other concerns will be administered by the contracting activity.